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7 Attorneys for Defendant  
8 BALANCE BAR COMPANY

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION  
13

14 KIMBERLY S. SETHAVANISH, a California  
resident on behalf of herself and all others  
15 similarly situated,

16 Plaintiff,

17 v.

18 BALANCE BAR COMPANY, a Delaware  
corporation,

19 Defendant.  
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21  
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Case No. 4:11-cv-04547-PJH

**DECLARATION OF NORMAN C. HILE  
IN SUPPORT OF DEFENDANT  
BALANCE BAR'S MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT**

Date: January 25, 2012  
Time: 9:00 a.m.  
Courtroom: 3  
Floor: 3rd  
Judge: Hon. Phyllis J. Hamilton  
Action Filed: September 13, 2011

1 I, Norman C. Hile, declare as follows:

2 1. I am an attorney licensed to practice in California and a partner in the law firm of  
3 Orrick, Herrington & Sutcliffe LLP, counsel for defendant Balance Bar, Inc. I make this  
4 declaration of my own knowledge and if called as a witness could and would testify as follows.

5 2. Attached as Exhibit A to this declaration is a true and correct copy of a letter  
6 received by Balance Bar on or around August 30, 2011 and referenced in paragraph 77 of  
7 Plaintiff Kimberly Sethavanish's First Amended Complaint.

8  
9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct. Executed this 2nd day of December, 2011, in Sacramento,  
11 California.

12  
13   
14 NORMAN C. HILE

# Exhibit A

LAW OFFICES OF  
JANET LINDNER SPIELBERG

12400 WILSHIRE BOULEVARD  
SUITE 400  
LOS ANGELES, CA 90025  
PHONE 310-392-8801  
FAX 310-278-5938

August 30, 2011

**VIA U.S. REGISTERED MAIL**

James A. Wolfe, CEO  
The Balance Bar Company  
115 East Stevens Avenue  
Valhalla, New York 10595

Re: Violation of the California Consumer Legal Remedies Act,  
CAL. CIV. CODE § 1750, *et seq.*, Regarding Advertising and  
Marketing of Balance Bars as “All Natural”

Dear Mr. Wolfe:

We represent Kiki Sethavanish and, potentially, a California and a nationwide class consisting of all consumers who have purchased the products that are the subject matter of this letter.<sup>1</sup>

Ms. Sethavanish has purchased Balance Bars (“Bars”) for herself and her family and did so specifically because the bars were touted as being “all natural.” In fact, she paid more money for these bars than she would have paid for their non-natural counterparts because she thought it important to provide all natural products for her family and herself whenever possible.

Although prominently labeled “all natural,” the Bars purchased by our client contained cocoa (Dutched) - also known as alkalized cocoa or cocoa processed with alkali - as an ingredient. Ms. Sethavanish recently learned that the alkalizing process robs cocoa of some of its most beneficial nutrients. Moreover, it is our client’s

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<sup>1</sup> Ms. Sethavanish is represented by three law firms: the Law Offices of Janet Lindner Spielberg; the Braun Law Group, P.C.; and, Stember Feinstein Doyle & Payne LLC.

understanding that the chemical used in alkalizing the cocoa was potassium carbonate. Potassium carbonate is not natural – in fact the United States Department of Agriculture specifically categorizes it as a synthetic. While the FDA does not directly regulate the term “natural,” the FDA has established a policy defining the outer boundaries of the use of that term by clarifying that a product is not natural if it contains color, artificial flavors, or *synthetic* substances.

<http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>.

Nevertheless, The Balance Bar Company prominently displays the phrase “all natural” on the labels of these products, cultivating the image that these products are more wholesome than those that are not natural, in an effort to promote the sale of the products. Indeed, as a result of this false and misleading labeling, The Balance Bar Company was able to sell these products to thousands of consumers in California and throughout the United States and to profit handsomely from these transactions.

The Balance Bar Company’s conduct as described herein is in violation of the California Consumer Legal Remedies Act (“CLRA”). California Civil Code §1770 (5) applies to misrepresentations regarding the characteristics of goods sold in California – *specifying that misleading representations regarding ingredients violate the CLRA.*<sup>2</sup>

In accord with California Civil Code Section 1782, Ms. Sethavanish now demands that within 30 days from the receipt of this letter, The Balance Bar Company do the following:

- (1) Provide Ms. Sethavanish with an accounting of its sales and profits (both gross and net profits) for all Balance Bars sold within the past three years throughout the United States that contained alkalized cocoa, cocoa processed with alkali, or Cocoa (Dutched);
- (2) Remove the phrase “all natural” from every Balance Bar containing alkalized cocoa, cocoa processed with alkali, and cocoa (Dutched);
- (3) Agree that no other terms will be used in The Balance Bar Company’s advertising of products containing these ingredients that would suggest that the products are natural;
- (4) Pay restitution in the form of restitutionary disgorgement of profits earned over the past three years as a result of sales in California and throughout the United States of the aforementioned products to Ms. Sethavanish *and to all other putative class members.*

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<sup>2</sup> This conduct also violates California’s Sherman Food, Drug, and Cosmetic Law (“Sherman Law”), Article 6, Section 110660 provides that: “Any food is misbranded if its labeling is false or misleading in any particular.” Other states have similar laws as well.

If you wish to discuss the above, please do not hesitate to contact me. If we do not hear from you prior to the close of business on Tuesday, October 4, 2011, we will assume that The Balance Bar Company has no interest in reaching a resolution to this matter without necessitating litigation and we will file a class action complaint on behalf of Ms. Sethavanish and those similarly situated forthwith.

Thank you for your attention to this matter. We look forward to hearing from you shortly.

Sincerely,



Janet Lindner Spielberg



LAW OFFICES OF  
JANET LINDNER SPIELBERG

12400 WILSHIRE BOULEVARD  
SUITE 400  
LOS ANGELES, CA 90025

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE  
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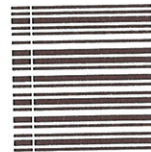
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